

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
GUADALUPE ALVARADO,) CASE NO. 05-60580 JPK
) Chapter 13
Debtor.)

ORDER DENYING MOTION TO RECONSIDER

On December 14, 2005, the Court entered an order which denied confirmation to the debtor's Chapter 13 plan on the basis that the proposed plan did not satisfy the requirements of 11 U.S.C. § 1325(a)(6) due to underfunding for payment of claims of taxing authorities whose claims were on file and deemed allowed at that time. On January 4, 2006, the debtor, by counsel, filed a Motion for Court to Reconsider Order Requiring an Amended Plan and Denying Confirmation ("Motion"). First, the Motion does not state the specific grounds upon which it is asserted, and theoretically it could be sought to be advanced under either Fed.R.Bankr.P. 9023/Fed.R.Civ.P. 59 or Fed.R.Bankr.P. 9024/Fed.R.Civ.P. 60. If the former, it would be untimely and not well taken: Rule 59 of Fed.R.Civ.P. applies only to final judgments, and the motion must be filed within 10 days of the date of entry the judgment to which the motion is directed. The Court thus assumes that the Motion is advanced pursuant to Rule 60(b), presumably Rule 60(b)(6).

The particular problem is that the Motion states no grounds upon which it can be premised. At the time the order which it seeks to affect was entered, the United States of America, Internal Revenue Service, had an allowed priority claim of \$5,000.00, and an allowed secured claim of \$20,603.86. Neither of these claims had been objected to, and therefore based upon them, the Chapter 13 Trustee and the Court correctly concluded that the plan failed to provide sufficient funding for paying the secured claim in the manner required by 11 U.S.C. § 1325(a)(5) and the priority claim in the amount required by 11 U.S.C. § 1325(a)(1)/11 U.S.C.

§ 1322(a)(2). The Motion appears to assert that the priority claim may be subject to modification when examination of the 2003 tax return is completed by the Internal Revenue Service: that may be the case, and rather than the amount of the claim being reduced to the amount stated in the return, it is possible that the amount of the claim will actually increase. As to the assertion that the value of property to which allowed secured claim could attach is only \$1,775.00, until that claim is challenged and the actual value of the allowed secured claim is determined under 11 U.S.C. § 506(a), the allowed secured claim is \$20,603.86.

Based upon the foregoing, the Court finds that the Motion fails to establish any grounds upon which the relief requested by it may be granted. The debtor's remedy is not to challenge the order of December 14, 2005, but rather to request an extension of time to file an amended plan as required by that order, and then to file an objection to the claim of the United States of America, Internal Revenue Service, so that the amount of that claim can become fixed if the debtor deems it to be incorrect.

IT IS ORDERED that the above-designated Motion is denied.

Dated at Hammond, Indiana on January 19, 2006.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtor, Attorney for Debtor
Trustee, US Trustee